

Commodity Credit Corporation, USDA

§ 1450.1

§ 1437.505 Application for payment for the tropical region.

(a) For producers of covered tropical crops in Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.10 and 1437.504.

(b) For producers in Puerto Rico and Hawaii, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.10 and 1437.502(i), and

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

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Subpart A—Common Provisions

§ 1450.1 Administration.

(a) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), or a designee. In the field, the regulations in this part will be implemented by the Farm Service Agency (FSA) State and county committees (“State committees” and “county committees,” respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the FSA Deputy Administrator for Farm Program (Deputy Administrator).

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority to a State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Subject to the availability of funds and all other eligibility provisions of this part, this part provides the terms, conditions and requirements of BCAP. In the event that CCC determines that available funds are insufficient to accommodate the demand for establishment and annual payments as well as all potential applications for matching payments for collection, harvest, storage, and transportation of eligible material, without any advance notice other than that stated here, CCC may prioritize the expenditure of program funds in favor of funding for the selection of BCAP project areas and the establishment and annual payments related to those project areas, and may make such other priorities in approvals that will, in the determination of the Deputy Administrator, advance the purposes of BCAP.

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.2 Definitions.

(a) The definitions in part 718 of this title apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Advanced biofuel means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from re-

newable biomass; and other fuel derived from cellulosic biomass.

Agricultural land means cropland, grassland, pastureland, rangeland, hayland, and other land on which food, fiber, or other agricultural products are produced or capable of being produced.

Animal waste means the organic animal waste of animal operations such as confined beef or dairy, poultry, or swine operations including manure, contaminated runoff, milking house waste, dead poultry, bedding, and spilled feed. Depending on the poultry system, animal waste can also include litter, wash-flush water, and waste feed.

Annual payment means the annual payment specified in the BCAP contract for BCAP project areas that is issued to a participant for placing eligible land in BCAP.

Beginning farmer or rancher means, as determined by CCC, a person or entity who:

(1) Has not been a farm or ranch operator or owner for more than 10 years,

(2) Materially and substantially participates in the operation of the farm or ranch, and

(3) If an entity, is an entity in which at least 50 percent of the members or stockholders of the entity meet the first two requirements of this definition.

Biobased product means a product determined by CCC to be a commercial or industrial product (other than food or feed) that is:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock.

Bioenergy means renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

Biofuel means a fuel derived from renewable biomass.

Biomass conversion facility means a facility that converts or proposes to convert renewable biomass into heat,

power, biobased products, or advanced biofuels.

Conservation district is as defined in part 1410 of this chapter.

Conservation plan means a schedule and record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures for eligible crops and the collection or harvesting of eligible material, as appropriate, and addresses natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Contract acreage means eligible land that is covered by a BCAP contract between the producer and CCC.

Delivery means the point of delivery of an eligible crop or eligible material, as determined by the CCC.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs, or a designee.

Dry ton means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.

Eligible crop means a crop of renewable biomass as defined in this section excluding:

(1) Any crop that is eligible to receive payments under Title I, "Commodity Programs," of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

Eligible material is renewable biomass as defined in this section excluding:

(1) Material that is whole grain from any crop that is eligible to receive pay-

ments under Title I of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; or material that is mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber;

(2) Animal waste and by-products of animal waste including fats, oils, greases, and manure;

(3) Food waste and yard waste; and

(4) Algae.

Eligible material owner, for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material, who has the risk of loss in the material that is delivered to an eligible facility and who has directly or by agent delivered or intends to deliver the eligible material to a qualified biomass conversion facility, including:

(1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and

(2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the US Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted a copy of the permit or contract authorizing such collection to CCC.

Equivalent plan means a plan approved by a State or other State agency or government entity that is similar to and serves the same purpose as a forest stewardship plan and has similar goals, objectives, and terms. These plans generally address natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

Establishment payment means the payment made by CCC to assist program participants in establishing the practices required for non-woody perennial crops and woody perennial crops, as specified in a producer contract under the project portion of BCAP.

Food waste means, as determined by CCC, a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

Forest stewardship plan means a long-term, comprehensive, multi-resource forest management plan that is prepared by a professional resource manager and approved by the State Forester or equivalent State official. Forest stewardship plans address the following resource elements wherever present, in a manner that is compatible with landowner objectives concerning:

- (1) Soil and water;
- (2) Biological diversity;
- (3) Range;
- (4) Aesthetic quality;
- (5) Recreation;
- (6) Timber;
- (7) Fish and wildlife;
- (8) Threatened and endangered species;
- (9) Forest health;
- (10) Archeological, cultural and historic sites;
- (11) Wetlands;
- (12) Fire; and
- (13) Carbon cycle.

Higher-value product means an existing market product that is comprised principally of an eligible material or materials and, in some distinct local regions, as determined by the CCC, has an existing market as of October 27, 2010. Higher-value products may include, but are not limited to, products such as mulch, fiberboard, nursery media, lumber, or paper.

Highly erodible land means land as determined as specified in part 12 of this title.

Indian tribe has the same meaning as in 25 U.S.C. 450b (section 4 of the Indian Self-Determination and Education Assistance Act).

Institution of higher education has the same meaning as in 20 U.S.C. 1002(a)

(section 102(a) of the Higher Education Act of 1965).

Intermediate ingredient or feedstock means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material (including plant, animal, and marine material), or forestry material that is subsequently used to make a more complex compound or product.

Legal entity has the same meaning as in the regulations in §1400.3 of this chapter.

Matching payments means those CCC payments provided for eligible material delivered to a qualified biomass conversion facility.

Native sod means land:

- (1) On which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and
- (2) That had never been tilled for the production of an annual crop as of June 18, 2008.

Nonindustrial private forest land means, as defined in 16 U.S.C. 2103a (the Cooperative Forestry Assistance Act of 1978, as amended), rural lands with existing tree cover, or suitable for growing trees, where the land is owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

Offer means, unless otherwise indicated, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the establishment payment and annual payment component of BCAP.

Operator means a person who is in general control of the land enrolled in BCAP, as determined by CCC.

Participant means a person who is participating in BCAP—either as a person who has applied for and is eligible to receive payments, has a BCAP contract, or is a project sponsor.

Payment period means a contract period of either up to 5 years for annual and non-woody perennial crops, or up to 15 years for woody perennial crops, during which the participant receives an annual payment under the establishment payment and annual payment component of BCAP.

Person has the same meaning as in the regulations in §1400.3 of this chapter. In addition, for BCAP, the term “producer” means either an owner or operator of BCAP project acreage that is physically located in a BCAP project area, or a producer of an eligible crop produced on that acreage.

Producer means, with respect to subpart B of this part, a person who had the risk of loss in the production of the material that is the subject of the BCAP payment; and with respect to subpart C of this part, an owner or operator of contract acreage that is physically located within a BCAP project area or a producer of an eligible crop produced on that acreage and who has the risk of loss in the relevant crop at the relevant period of time or who will have the risk of loss in crops required to be produced.

Project area means a geographic area with specified boundaries submitted by a project sponsor and approved by CCC under the establishment payment and annual payment component of BCAP.

Project sponsor means a group of producers or a biomass conversion facility who proposes a project area.

Qualified biomass conversion facility means a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a BCAP agreement with CCC.

Renewable biomass means:

(1) Appropriate materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Department of the Interior, Bureau of Land Management land that:

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of 16 U.S.C. 6512 (specifically, sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 and large-tree retention provisions of subsection (f)); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including:

(A) Feed grains;

(B) Other agricultural commodities;

(C) Other plants and trees; or

(D) Algae;

(ii) Waste material, including:

(A) Crop residue;

(B) Other vegetative waste material (including wood waste and wood residues);

(C) Animal waste and byproducts (including fats, oils, greases, and manure); and

(D) Food waste and yard waste.

Socially disadvantaged farmer or rancher means, unless other classes of persons are approved by CCC in writing, a farmer or rancher who is a member of a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Groups include:

(1) American Indians or Alaskan Natives;

(2) Asians or Asian Americans;

(3) Blacks or African Americans;

(4) Native Hawaiians or other Pacific Islanders; and

(5) Hispanics.

Technical assistance means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with BCAP to owners or operators, as approved by CCC, includes, but is not limited to: Technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed

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to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

Tribal government means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to 43 U.S.C. 1601–1629h (the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible to receive or retain all or a portion of BCAP payments.

Yard waste means any renewable biomass generated from municipal or residential land, such as urban forestry materials, construction or demolition materials, trimmings from grasses and trees, or biomass removed due to invasive species or weather-related disaster, that can be separated from and has low potential (such as contamination with plastics, metals, chemicals, or other toxic compounds that cannot be removed) for the generation of toxic byproducts resulting from conversion, and that otherwise cannot be recycled for other purposes (such as post-consumer waste paper).

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.3 General.

(a) The objectives of BCAP are to:

(1) Support the establishment and production of eligible crops for conversion to bioenergy and biobased products in selected project areas; and

(2) Assist agricultural and forest landowners and operators with matching payments to support the collection, harvest, storage, and transportation costs of eligible material for use in a biomass conversion facility.

(b) A participant must implement and adhere to a conservation plan, forest stewardship plan, or equivalent plan prepared in accordance with BCAP guidelines, as established and deter-

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mined by CCC. A conservation plan, forest stewardship plan, or equivalent plan for contract acreage must be implemented by a participant and must be approved by the conservation district in which the lands are located, or, in the case of Federal lands, the appropriate approval authority of jurisdiction. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) Agricultural and forest landowners and operators must comply with any applicable existing conservation plan, forest stewardship plan, or equivalent plan and all other applicable laws, regulations, or Executive Orders for any removal of eligible material for use in a biomass conversion facility to receive matching payments.

(d) Except as otherwise provided in this part, a participant may receive, in addition to any payments under this part, financial assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in BCAP, without any commensurate reduction in BCAP payments.

§ 1450.4 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a BCAP contract, CCC may terminate the BCAP contract.

(2) If the BCAP contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under the contract and must refund all payments previously received, plus interest; and

(ii) The participant must pay liquidated damages to CCC in an amount as specified in the contract.

(b) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and would not deter the accomplishment of the purposes of BCAP.

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§ 1450.5 Performance based on advice or action of USDA.

(a) The provisions of § 718.303 of this title relating to performance based on the action or advice of an authorized representative of USDA apply to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise permitted by this part.

(b) [Reserved]

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.6 Access to land.

(a) For purposes related to this program, the participant must upon request provide any representative of USDA, or designee thereof, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant must provide such representatives or designees with access to examine records for the land to determine land classification, eligibility, or for other purposes, and to determine whether the participant is in compliance with the terms and conditions of the BCAP contract.

§ 1450.7 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part will be divided as specified in the applicable contract. CCC may refuse to enter into a contract when there is a disagreement among persons or legal entities seeking enrollment as to a person's or legal entity's eligibility to participate in the contract as a tenant or sharecropper, and there is insufficient evidence, as determined by CCC, to indicate whether the person or legal entity seeking participation as a tenant or sharecropper has an interest in the acreage offered for enrollment in the BCAP.

(b) CCC may remove an operator or tenant from a BCAP contract when:

(1) The operator or tenant requests in writing to be removed from the BCAP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined appropriate by CCC; or

(4) A court of competent jurisdiction orders the removal of the operator or tenant from the BCAP contract and such order is received by CCC.

(c) Tenants who fail to maintain tenancy on the acreage under contract for any reason may be removed from a contract by CCC.

§ 1450.8 Payments not subject to claims.

(a) Subject to part 1403 of this chapter, any payment or portion of the payment due any person or legal entity under this part will be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

(b) [Reserved]

§ 1450.9 Assignments.

(a) Participants may assign the right to receive cash payments under BCAP, in whole or in part, as provided in part 1404 of this chapter.

(b) [Reserved]

§ 1450.10 Appeals.

(a) Except as provided in paragraph (b) of this section, a person or legal entity applying for participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by the Natural Resources Conservation Service may be appealed in accordance with procedures established under part 614 of this title or otherwise established by the Natural Resources Conservation Service.

§ 1450.11 Scheme or device.

(a) If CCC determines that a person or legal entity has employed a scheme or device to defeat the purposes of this part, or any part, of any USDA program, payment otherwise due or paid

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such person or legal entity during the applicable period may be required to be refunded, with interest calculated from the date of disbursement of the funds by CCC, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or legal entity of any payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities must report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest may include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest will be considered a scheme or device under this section.

§ 1450.12 Filing of false claims.

(a) If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant will be ineligible for payments under this part with respect to the fiscal year in which the false information or claim was filed and the contract may be terminated, in which case CCC may demand a full refund of all prior payments.

(b) False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan, forest stewardship plan, or equivalent plan. Any amounts paid under these circumstances must be refunded to CCC, together with interest as determined by CCC, and any amounts otherwise due the participant will be withheld.

(c) The remedies provided for in this section will be in addition to any other remedy available to CCC and in addition to any criminal penalty or any

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other remedy available to the United States.

§ 1450.13 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part may be paid to the participant's successor(s) in accordance with part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part will be subject to the compliance requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part will be in addition to any other remedy, including, but not limited to, criminal remedies or actions for damages in favor of CCC, or the United States as may be permitted by law.

(d) Absent a scheme or device to defeat the purposes of BCAP, when an owner loses control of BCAP acreage enrolled under subpart C of this part due to foreclosure and the new owner chooses not to continue the contract in accordance with §1450.215 refunds will not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

Subpart B—Matching Payments

§ 1450.100 General.

(a) A person or legal entity with the right to collect or harvest eligible material for the sale and delivery of such eligible material to a qualified biomass conversion facility, may be eligible for payment under the provisions of this subpart.

(b) [Reserved]

§ 1450.101 Qualified biomass conversion facility.

(a) To be considered a qualified biomass conversion facility, a biomass conversion facility must enter into an agreement with CCC and must:

(1) Meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;

(2) Agree in writing to:

(i) Maintain accurate records of all eligible material purchases and related documents regardless of whether matching payments will be sought by the seller; and

(ii) Make available at one place and at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to BCAP for not less than 3 years after the date that eligible material was delivered to the qualified biomass conversion facility;

(iii) Clearly indicate the actual tonnage delivered on the scale ticket or equivalent to be provided to the eligible material owner;

(iv) Calculate a total dry ton weight equivalent of the actual tonnage delivered and provide that measurement to the eligible material owner;

(v) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered;

(vi) Pay fair market value for eligible material regardless of whether the seller has applied for or receives a matching payment authorized by this subpart.

(b) For a qualified biomass conversion facility, CCC can:

(1) Periodically inform the public that payments may be available for deliveries of eligible material to such qualified biomass conversion facility;

(2) Maintain a listing of qualified biomass conversion facilities for general public access and distribution that may include general information about the facility and its eligible material needs; and

(3) Suspend, terminate, or take other actions as appropriate when CCC determines a qualified biomass conversion facility fails to comply with the agreement.

§ 1450.102 Eligible material owner.

(a) In order to be eligible for a payment under this subpart, a person or legal entity must:

(1) Be a producer of an eligible crop that is produced on contract acreage authorized by subpart C of this part; or

(2) Have the right to collect or harvest eligible material and such person may only receive payment if the risk of loss for the material transferred to that person occurred prior to the time the payment is made that will be used to determine the matching payment that is requested under this subpart; and

(3) Certify that the eligible material for which a payment may be issued according to § 1450.106 has been harvested according to a conservation plan, forest stewardship plan, or equivalent plan, and, if woody eligible material collected and harvested on land other than contract acreage, are byproducts of preventative treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health.

(b) A qualified biomass conversion facility that meets the requirements of paragraph (a) of this section may be considered an eligible material owner if it otherwise meets the definition in this part.

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.103 Eligible material that qualifies for payment.

(a) Except for paragraph (b) of this section, in order to qualify, as determined by CCC, for a payment under this subpart:

(1) Eligible material must be renewable biomass that, at a minimum, meets the definition in § 1450.2 and is listed on the official Web site for BCAP as an eligible material at <http://www.fsa.usda.gov/energy>;

(2) Eligible material must be collected or harvested by the eligible material owner:

(i) Directly from:

(A) National Forest System land, Bureau of Land Management land;

(B) Non-Federal land; or

(C) Land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States;

(ii) Consistent with a conservation plan, forest stewardship plan, or plan

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that CCC determined to be an equivalent plan, that provides the following:

(A) The purpose of the harvest of the eligible material;

(B) The expected volume of the harvest;

(C) The total number of acres to be harvested;

(D) The name of the eligible material owner(s); and

(E) Any additional information, as determined by CCC; and

(iii) Consistent with Executive Order 13112, “Invasive Species.”

(3) Woody eligible material produced on land other than contract acreage must be:

(i) Byproducts of preventative treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; and

(ii) If harvested from Federal lands then done so in accordance with the requirements for old-growth maintenance, restoration, and management direction provided by 16 U.S.C. 6512 for Federal lands; and

(4) Eligible material must be delivered to a qualified biomass conversion facility (as specified in §1450.101 and other provisions of these regulations).

(b) Notwithstanding paragraph (a) of this section, payments under this subpart are not authorized for:

(1) Any eligible material delivered before October 27, 2010;

(2) Any eligible material for which payment from a biomass conversion facility was received before the application for payment under this subpart is received and approved by the FSA county office, as specified in §1450.104;

(3) Any woody eligible material collected or harvested outside contract acreage that would otherwise be used for higher-value products; or

(4) Any otherwise eligible material collected or harvested outside contract acreage that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value market product in order to be used for heat, power, biobased products, or advanced biofuels.

§ 1450.104 Signup.

(a) Applications for participation and requests for payments under this subpart will be accepted on a continuous basis.

(b) An eligible material owner must apply to participate in the matching payments component of BCAP before payment for the eligible material is received from a qualified biomass conversion facility. The application must be submitted to the FSA county office and approved by CCC before any payment is made by the qualified biomass conversion facility for the eligible material.

(c) Applications must include the following:

(1) Based on information obtained from contracts, agreements, or binding letters of intent:

(i) An estimate of the total dry tons of eligible material expected to be sold to the qualified biomass conversion facility;

(ii) The type(s) of eligible material that is expected to be sold;

(iii) The name of the qualified biomass conversion facility that will purchase the eligible material;

(iv) The expected, fair market, per dry ton payment rate the owner plans to receive for the delivery of the eligible material; and

(v) The date or dates the eligible material is expected to be delivered to the qualified biomass conversion facility.

(2) A new or amended conservation plan, forest stewardship plan, or equivalent plan, as specified in §1450.103.

(d) Eligible material owners who deliver eligible material to more than one qualified biomass conversion facility must submit separate applications for each facility to which eligible material will be delivered.

(e) After delivery, eligible material owners must notify CCC and request the payment. Payments will be disbursed only after delivery is verified by CCC.

(f) Information that must be submitted to CCC in order to request payments includes settlement, summary, or other acceptable data that provide:

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using

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standard moisture determinations applicable to the eligible material;

(2) Total payment received, including the per dry-ton payment rate(s) matched with actual and dry weight tonnage delivered; and

(3) The qualified biomass conversion facility's certification as to the authenticity of the information.

§ 1450.105 Obligations of participant.

(a) All participants whose payment application was approved must agree to:

(1) Carry out and certify compliance with the terms and conditions of the payment application including adherence to a conservation plan, forest stewardship plan, or equivalent plan, as appropriate; and

(2) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP contract and this part.

(b) [Reserved]

§ 1450.106 Payments.

(a) Payments under this subpart will be for a term not to exceed 2 years beginning the date that CCC issues the first payment, under this subpart to the participant and for each participant runs from the date that the participant receives a matching payment from CCC even though the participant may over time change facilities. The Deputy Administrator may further limit the period to reflect participation in BCAP for any time prior to October 27, 2010 as the Deputy Administrator deems appropriate. In addition, where ownership of a source of material has changed, or where it is deemed that other circumstances warrant, the Deputy Administrator may apply the time limit applicable to a person or entity or to another person or entity to assure that the 2-year limit is not avoided by private arrangement or other circumstance.

(b) Payments under this subpart will be paid at a rate of \$1 for each \$1 per

dry ton provided by the qualified biomass conversion facility for the market-based sale of eligible material in an amount up to \$45 per dry ton.

Subpart C—Establishment Payments and Annual Payments

§ 1450.200 General.

(a) As provided in this subpart, establishment payments and annual payments may be provided by CCC to producers of eligible crops within a project area.

(b) [Reserved]

§ 1450.201 Project area proposal submission requirements.

(a) To be considered for selection as a project area, a project sponsor must submit a proposal to CCC that includes, at a minimum:

(1) A description of the sources of renewable biomass, eligible land, and eligible crops that may be enrolled within the proposed project area;

(2) A letter of commitment from a biomass conversion facility stating that the facility will use, for BCAP purposes, eligible crops intended to be produced in the proposed project area;

(3) Information demonstrating that the biomass conversion facility will have sufficient equity available to operate if the facility is not operational at the time the project area proposal is submitted; and

(4) Other information that gives CCC a reasonable assurance that the biomass conversion facility will be in operation in a timely manner so that it will utilize the eligible crops, as determined by CCC.

(b) The project area description required in paragraph (a) of this section needs to specify geographic boundaries and be described in definite terms such as acres, watershed boundaries, mapped longitude and latitude coordinates, or counties.

(c) The project area needs to be physically located near a biomass conversion facility or facilities, as determined by CCC.

(d) Project area proposals may limit the nature and types of eligible crops to be established within a project area.

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§ 1450.202 Project area selection criteria.

(a) In selecting project areas, CCC will consider:

(1) The dry tons of the eligible crops proposed to be produced in the proposed project area and the probability that such crops will be used for BCAP purposes;

(2) The dry tons of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(3) The anticipated economic impact in the proposed project area;

(4) The opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed project area;

(5) The participation rate by beginning or socially disadvantaged farmers or ranchers;

(6) The impact on soil, water, and related resources;

(7) The variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices, and monoculture and polyculture crop mixes;

(8) The range of eligible crops among project areas; and

(9) Any other additional criteria, as determined by CCC.

(b) [Reserved]

§ 1450.203 Eligible persons and legal entities.

(a) In order to be eligible to enter into a BCAP contract for this subpart, a person or legal entity must be an owner, operator, or tenant of eligible land within a project area, as defined in § 1450.204 and be the person or entity with the ability to perform under the terms of the contract.

(b) [Reserved]

§ 1450.204 Eligible land.

(a) For the purposes of this subpart, eligible land must be physically and legally capable of producing an eligible crop and must be:

(1) Agricultural land; or

(2) Nonindustrial private forest land.

(b) For the purposes of this subpart, eligible land is not:

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(1) Federal- or State-owned land, including land owned by local governments or municipalities;

(2) Land that is native sod;

(3) Land enrolled in the Conservation Reserve Program operated under part 1410 of this chapter;

(4) Land enrolled in the Wetlands Reserve Program operated under part 1467 of this chapter; or

(5) Land enrolled in the Grassland Reserve Program operated under part 1415 of this chapter.

§ 1450.205 Duration of contracts.

(a) Contracts under this subpart will be for a term of up to:

(1) 5 years for annual and non-woody perennial crops; and

(2) 15 years for woody perennial crops.

(b) The establishment time period may vary due to: Type of crop, agronomic conditions (for example, establishment time frame, winter hardiness), and other factors.

§ 1450.206 Obligations of participant.

(a) All participants subject to a BCAP contract must:

(1) Carry out the terms and conditions of the contract;

(2) Make available to CCC or to an institution of higher education or other entity designated by CCC, such information as CCC determines to be appropriate to promote the production of eligible crops and the development of renewable biomass conversion technology;

(3) Comply with the highly erodible land and wetland conservation requirements of part 12 of this title;

(4) Implement a:

(i) Conservation plan,

(ii) Forest stewardship plan, or

(iii) Equivalent plan.

(5) Implement the conservation plan, forest stewardship plan, or equivalent plan which is part of such contract, in accordance with the schedule of dates included in such conservation plan, forest stewardship plan, or equivalent plan, unless CCC determines that the participant cannot fully implement the conservation plan, forest stewardship plan, or equivalent plan for reasons beyond the producer's control and CCC

and the participant agree to a modified plan.

(6) Demonstrate compliance with the conservation plan, forest stewardship plan, or equivalent plan through required self-certification subject to compliance spot checks, as determined by CCC.

(7) Establish temporary vegetative cover either within the timeframes required by the conservation plan, forest stewardship plan, or equivalent plan or as determined by the Deputy Administrator, if the eligible crops cannot be timely established; and

(8) If the participant has a share of the payment greater than zero, be jointly and severally responsible with the other contract participants for compliance with the provisions of such contract and the provisions of this part, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the contract and this part.

(b) Payments may cease and producers may be subject to contract termination for failure to establish eligible crops.

(c) A contract will not be terminated for failure by the participant to establish an approved cover on the land if, as determined by CCC:

(1) The failure to plant or establish such cover was due to a natural disaster such as excessive rainfall, flooding, or drought; and

(2) The participant establishes the approved cover as soon as practicable after the wet or drought conditions that prevented the establishment of such cover subside.

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

§ 1450.207 Conservation plan, forest stewardship plan, or equivalent plan.

(a) The producer must implement a conservation plan, forest stewardship plan, or equivalent plan that complies with CCC guidelines and is approved by the appropriate conservation district for the land to be entered in BCAP. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, or disapproves the conservation plan, forest stewardship plan, or equivalent

plan, such approval may be waived by CCC.

(b) The practices and management activities included in a conservation plan, forest stewardship plan, or equivalent plan, and agreed to by the producer, must be implemented in a cost-effective manner that meets BCAP purposes as determined by CCC.

(c) If applicable, a tree planting plan must be developed and included in the conservation plan, forest stewardship plan, or equivalent plan. Such tree planting plan may allow a reasonable time to complete plantings, as determined by CCC.

(d) Each conservation plan, forest stewardship plan, or equivalent plan, and any revision of the plan, will be subject to approval by CCC.

1450.208 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan, forest stewardship plan, or equivalent plan that meet all standards needed to cost-effectively establish:

- (1) Annual crops;
- (2) Non-woody perennial crops; and
- (3) Woody perennial crops.

(b) [Reserved]

§ 1450.209 Signup.

(a) Offers for contracts may be submitted on a continuous basis to CCC as determined by the Deputy Administrator.

(b) [Reserved]

§ 1450.210 Acceptability of offers.

(a) Acceptance or rejection of any contract offered will be at the sole discretion of CCC, and offers may be rejected for any reason as determined appropriate to accomplish the purposes of BCAP.

(b) An offer to enroll land in BCAP will be irrevocable for such period as is determined and announced by CCC. The producer will be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by CCC. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and BCAP.

§ 1450.211 BCAP contract.

(a) In order to enroll land in BCAP, the participant must enter into a contract with CCC.

(b) The contract is comprised of:

(1) The terms and conditions for participation in BCAP;

(2) The conservation plan, forest stewardship plan, or equivalent plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a contract, the producer must submit an offer to participate as specified in § 1450.209;

(d) The contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the eligible land to be placed in the BCAP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve contracts on behalf of CCC.

(f) CCC will honor contracts even in the event that a project area biomass conversion facility does not become fully or partially operational.

(g) Contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) The BCAP practice fails or is not established after a certain time period, as determined CCC, and the cost of restoring or establishing the practice outweighs the benefits received from the restoration or establishment;

(5) The contract was approved based on erroneous eligibility determinations; or

(6) CCC determines that such a termination is needed in the public interest.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in BCAP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract,

the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest, as determined by CCC, and must pay liquidated damages as provided for in the contract and this part. CCC may permit the amount(s) to be repaid to be reduced to the extent that such a reduction will not impair the purposes of BCAP. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the contract when the land is purchased by or for the United States, as determined appropriate by CCC.

§ 1450.212 Establishment payments.

(a) Establishment payments will be made available upon a determination by CCC that an eligible practice, or an identifiable portion of a practice, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, such payments will be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, such payments will not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received establishment assistance from any Federal agency.

(d) Establishment payments may be authorized for the replacement or restoration of practices on land for which assistance has been previously allowed under BCAP, only if the failure of the original practice was due to reasons beyond the control of the participant, as agreed to by CCC.

(e) In addition, CCC may make partial payments when the participant completes identifiable components of the contract. CCC may make supplemental establishment payments, if necessary.

§ 1450.213 Levels and rates for establishment payments.

(a) CCC will pay not more than 75 percent of the actual or average cost (whichever is lower) of establishing

non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by CCC. This means that the calculated 75 percent of the average cost may represent less than 75 percent of the actual cost for an individual participant.

(c) Except as otherwise provided for in this part, a participant may receive, in addition to any payment under this part, establishment assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in BCAP without a commensurate reduction in BCAP establishment payments.

§ 1450.214 Annual payments.

(a) Annual payments will be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the BCAP contract.

(b) Based on the regulations in § 1410.42 of this chapter and as determined by CCC, annual payments include a payment based on all or a percentage of:

(1) A weighted average soil rental rate for cropland;

(2) The applicable marginal pastureland rental rate for all other land except for nonindustrial private forest land;

(3) For forest land, the average county rental rate for cropland as adjusted for forest land productivity for nonindustrial private forest land; and

(4) Any incentive payment as determined by CCC.

(c) The annual payment will be divided among the participants on a single contract as agreed to in such contract, as determined by CCC.

(d) A participant that has an established eligible crop and is therefore not eligible for establishment payments under § 1450.212 may be eligible for annual payments under the provisions of this section.

(e) In the case of a contract succession, annual payments will be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual payments will be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) Annual payments will be reduced, as determined by CCC:

(1) By a percentage of the sum of the sale price and payments under subpart B of this part for the crop collected or harvested from the contract acreage as follows:

(i) By 1 percent if the eligible crop is delivered to a biomass conversion facility for conversion to cellulosic biofuels as defined by 40 CFR 80.1401;

(ii) By 10 percent if the eligible crop is delivered to a biomass conversion facility for conversion to advanced biofuels;

(iii) By 25 percent if the eligible crop is delivered to a biomass conversion facility for conversion to heat, power, or biobased products;

(iv) By 100 percent if the eligible crop is used for a purpose other than conversion to heat, power, biobased products, or advanced biofuels;

(2) If the producer violates a term of the contract; or

(3) In other circumstances deemed necessary or appropriate to carry out BCAP.

§ 1450.215 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, land subject to a BCAP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new BCAP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator will assume all obligations of the BCAP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a BCAP contract with CCC, then, except as otherwise determined by the Deputy Administrator:

(i) Establishment payments will be made to the past or present participant who established the practice; and

(ii) Annual payments to be paid during the fiscal year when the land was transferred will be divided between the new participant and the previous participant in the manner specified in §1450.214(c).

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a BCAP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, or such other time as CCC determines to be appropriate, such contract will be terminated with respect to the affected portion of such land, and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Must refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by CCC. The provisions of §1450.211(g) will apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains BCAP contract acreage cannot be a party to the contract by succession. However, through an addendum to the contract, if the current operator of the property is one of the contract participants, the contract may remain in effect and, as permitted by CCC, such operator may continue to receive payments under such contract if CCC determines that such allowance is in the public interest and:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such Federal agency.

PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

Sec.

1455.1 Purpose and administration.

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1455.31 Miscellaneous.

AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

SOURCE: 75 FR 39140, July 8, 2010, unless otherwise noted.

§ 1455.1 Purpose and administration.

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA-HIP).

(b) VPA-HIP provides, within funding limits, grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and tribal governments. VPA-HIP is not an entitlement program and no grant will be made unless the application is acceptable to the Commodity Credit Corporation (CCC). CCC may reject a application for any reason deemed sufficient by CCC.

(c) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, CCC, or a designee, or the Deputy Administrator, Farm Programs (Deputy Administrator), Farm Service Agency (FSA).

§ 1455.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Appropriate wildlife habitat means habitat that is suitable or proper, as determined by the applicable State or